

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

CROSSPOINT CHURCH,)
)
Plaintiff,)
)
v.) No. 1:23-cv-00146-JAW
)
A. PENDER MAKIN, in her)
official capacity as Commissioner of)
the Maine Department of Education, et al.,)
)
Defendants.)

**JOINT MOTION IN RESPONSE TO COURT'S ORDER ON JOINT MOTION
TO CONVERT ORDER ON PRELIMINARY INJUNCTION INTO
ORDER ON PERMANENT INJUNCTION AND ENTER FINAL JUDGMENT**

On March 28, 2024, the parties filed a joint motion asking the Court to convert its order on preliminary injunction (ECF No. 41) into an order on permanent injunction and to enter final judgment. ECF No. 43. With that joint motion, the parties submitted a joint stipulation of facts to be included as part of the record for appellate review. ECF No. 44. Some of the stipulated evidence was not part of the record the Court had before it when it issued its preliminary injunction order, although it was part of the record in *Carson v. Makin*, No. 1:18-cv-327, which was cited in the preliminary injunction proceedings. In its April 1, 2024 order on the parties' joint motion, the Court questioned the extent to which it can convert its preliminary injunction order into a final judgment without considering the newly-submitted evidence. ECF No. 45.

In the parties' view, the additional evidence the parties seek to include in the record is background information that will not materially impact the Court's thorough legal analysis or its ruling on the preliminary injunction motion. In its April 1 order, the Court identified three documents in particular that were not part of the record: Bangor Christian School's application for admission, the Hasson interrogatory answers, and the Cardigan Mountain School correspondence. ECF 45 at 2.

While not attached as exhibits, Plaintiff cited to both the Hasson interrogatory answers and the Cardigan Mountain School correspondence in its motion for preliminary injunction. *See* ECF No. 5 at 4 (citing the stipulated record in *Carson v. Makin*, No. 1:18-cv-327, ECF No. 24, Ex. 2 at 17-18 (Cardigan Mountain school correspondence) and Ex. 3 at 3-4 (interrogatory responses from Education Commissioner Hasson)). The parties seek to include these documents in the record simply for purposes of appellate review and do not anticipate it would change the outcome of this Court's legal analysis. It is possible that the appellate court may analyze the legal issues differently than this Court, and those exhibits may be relevant to that analysis. In *Carson*, for example, the First Circuit expressly referenced the Hasson interrogatories in its opinion. *See Carson v. Makin*, 979 F.3d 21, 38 (1st Cir. 2020). At bottom, to ensure full appellate review and avoid possible remand, the parties seek to ensure that all potentially relevant evidence is included in the record.

Accordingly, the parties respectfully request that the Court accept into the record the joint stipulation of facts (along with attached exhibits) and, if the Court agrees that the new evidence is not material to its preliminary injunction order, convert that order into an order on permanent injunction and enter final judgment. If the Court believes further briefing on a permanent injunction is required, the parties will respond accordingly.

Date: April 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 24, 2024, I electronically filed the foregoing with the Court and served it on opposing counsel through the Court's CM/ECF system.

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